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Visible CEO calls ruling 'slap on wrist,' appeals

Mass High Tech: The Journal of New England Technology - by [Christopher Calnan](#) Mass High Tech

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Officials at Framingham software maker Visible Systems Corp. say they feel like they've won the battle but lost the war in the company's copyright infringement lawsuit against Unisys Corp.

So this week the company filed a federal appeal to get a "fair portion" of an estimated \$17 billion in revenue Unisys generated over three years by improperly using Visible's copyrighted name to brand a similar IT infrastructure mapping software. The appeal is a swift response to U.S. District Court Judge Richard G. Stearns' decision last week to uphold a July 31 jury award ordering Unisys to pay Visible Systems just \$250,000 for past damages along with interest amounting to \$17,554, and dating back to when the federal court found the infringement began in 2004. Stearns also granted an injunction requiring Unisys to discontinue using the Visible brand name, which it used in its "3D Visible Enterprise" product.

That \$250,000 amount, however, was based on Visible Systems' business rather than Unisys' business, said Visible Systems CEO George Cagliuso.

Cagliuso said Visible's high cost of pursuing a lawsuit for three years -- and the cost of competing against an international giant for a product using Visible's trademarked name -- forced the company to move its headquarters to Framingham from Lexington as a way to save expenses and reduce its full-time work force from 25 in 2003 to a current 16.

"Unisys has had no punishment," Cagliuso said. "It's been slapped on the wrist and (told) 'See you later.'"

Visible Systems attorney Stephen Galebach declined to say specifically how much money the company is seeking, just that it would be a "fair portion" of the estimated \$17 billion Unisys made using the Visible trademark.

"The basic issue on appeal will be: Does willful infringement pay, or should the (infringing party) have to give up the ill-gotten gains of the name?" Galebach said.

Visible may have an uphill battle on its hands, however. Courts tend to be more focused on eliminating consumer confusion rather than punishing infringing companies in such cases, said Kirk Teska, a patent attorney from Waltham law firm Iandiorio & Teska. Unless a company is found to have acted egregiously, injunctions and attorney fees are considered enough, he said.

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Unisys spokesman Jim Kerr declined to comment on the case.

Pennsylvania-based Unisys, which was founded in 1886, generated \$5.8 billion in revenue during 2004; \$5.7 billion in both 2005 and 2006.

Galebach said he expects a ruling on the appeal sometime during 2008.

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